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Subpart A—General Provisions

§ 9901.101 Purpose.

(a) This part contains regulations governing the establishment of a new human resources management system and a new labor relations system within the Department of Defense (DoD), as authorized by 5 U.S.C. 9902. Consistent with 5 U.S.C. 9902, these regulations waive or modify various statutory provisions that would otherwise be applicable to affected DoD employees. These regulations are prescribed jointly by the Secretary of Defense and the Director of the Office of Personnel Management (OPM).

(b)(1) This part is designed to meet a number of essential requirements for the implementation of a new human resources management system and a new labor relations system for DoD. The guiding principles for establishing these requirements are to put mission first; respect the individual; protect rights guaranteed by law, including the statutory merit system principles in 5 U.S.C. 2301; value talent, performance, leadership, and commitment to public service; be flexible, understandable, credible, responsive, and executable;

ensure accountability at all levels; balance human resources system interoperability with unique mission requirements; and be competitive and cost effective.

(2) The key operational characteristics and requirements of NSPS and the labor relations system, which these regulations are designed to facilitate, are as follows: *High Performing Workforce and Management*—employees and supervisors are compensated and retained based on their performance and contribution to mission; *Agile and Responsive Workforce and Management*—workforce can be easily sized, shaped, and deployed to meet changing mission requirements; *Credible and Trusted*—system assures openness, clarity, accountability, and adherence to the public employment principles of merit and fitness; *Fiscally Sound*—aggregate increases in civilian payroll, at the appropriations level, will conform to OMB fiscal guidance; *Supporting Infrastructure*—information technology support, and training and change management plans are available and funded; and *Schedule*—NSPS and the labor relations system will be operational and demonstrate success prior to November 2009.

§ 9901.102 Eligibility and coverage.

(a) Pursuant to the provisions of 5 U.S.C. 9902, all civilian employees of DoD are eligible for coverage under one or more of subparts B through I of this part, except to the extent specifically prohibited by law.

(b) At his or her sole and exclusive discretion, the Secretary may, subject to § 9901.105(b)—

(1) Establish or change the effective date for applying subpart I of this part to all eligible employees in accordance with 5 U.S.C. 9902(m); and

(2) With respect to subparts B through H of this part, apply these subparts to a specific category or categories of eligible civilian employees in organizations and functional units of the Department at any time in accordance with the provisions of 5 U.S.C. 9902. However, no category of employees may be covered by subparts B, C, E, F, G, or H of this part unless that category is also covered by subpart D of this part.

(c) Until the Secretary makes a determination under paragraph (b) of this section to apply the provisions of one or more subparts of this part to a particular category or categories of eligible employees in organizations and functional units, those employees, will continue to be covered by the applicable Federal laws and regulations that would apply to them in the absence of this part. All personnel actions affecting DoD employees will be based on the Federal laws and regulations applicable to them on the effective date of the action.

(d) Any new NSPS classification, pay, or performance management system covering Senior Executive Service (SES) members will be consistent with the policies and procedures established by the Governmentwide SES pay-for-performance framework authorized by 5 U.S.C. chapter 53, subchapter VIII, and applicable OPM regulations. If the Secretary determines that SES members employed by DoD should be covered by classification, pay, or performance management provisions that differ substantially from the Governmentwide SES pay-for-performance framework, the Secretary and the Director will issue joint regulations consistent with all of the requirements of 5 U.S.C. 9902.

(e) At his or her sole and exclusive discretion, the Secretary may rescind the application under paragraph (b) of this section of one or more subparts of this part to a particular category of employees and prescribe implementing issuances for converting that category of employees to coverage under applicable title 5 or other applicable provisions. The Secretary will notify affected employees and labor organizations in advance of a decision to rescind the application of one or more subparts of this part to them.

(f)(1) Notwithstanding any other provision of this part, but subject to the following conditions, the Secretary may, at his or her sole and exclusive discretion, apply one or more subparts of this part as of an effective date specified to a category of employees in organizational and functional units not currently eligible for coverage because of coverage under a system established by a provision of law outside the